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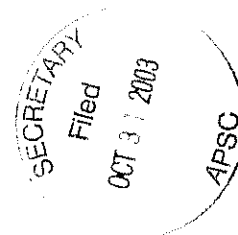
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October 31, 2003

BY HAND DELIVERY

Mr. Walter Thomas
Secretary
Alabama Public Service Commission
RSA Union Building
8th Floor
100 N. Union Street
Montgomery, Alabama 36104




Re: **Petition For A Declaratory Order Regarding Classification Of IP Telephony
Service, Docket No. 29016**

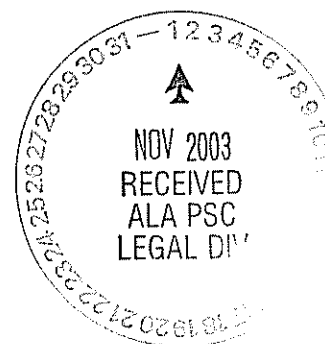
Dear Mr. Thomas:

Enclosed herewith for filing is the original, along with 10 copies of the comments of
ITC^DeltaCom Communications, Inc. Thank you

Very truly yours,


Robin G. Laurie

RGL:amc
Enclosure



**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

In Re:

Petition for Declaratory Order Regarding
Classification of IP Telephony Service

Docket No. 29016

**COMMENTS OF
ITC^DELTA COM COMMUNICATIONS INC.**



ITC^DeltaCom Communications, Inc. ("DeltaCom") submits these initial comments in response to the Petition for a Declaratory Order ("Petition") regarding the classification of IP Telephony Service ("VOIP"). The incumbent local exchange carriers ("ILECs") filed their Petition on July 31, 2003, and this Commission issued its order permitting initial comments on August 29, 2003. For the reasons outlined below, DeltaCom recommends that the Commission defer making any immediate decisions regarding the regulation of VOIP.

First, the FCC has a pending intercarrier compensation proceeding to resolve the many regulatory issues surrounding VoIP-based phone-to-phone communications.

Second, AT&T filed a petition with the FCC requesting it to confirm that access charges do not apply to VOIP.

Third, the Minnesota Public Utilities Commission ("MPUC") recently issued an order to regulate Vonage, a VOIP provider. The Minnesota Public Utilities Commission ("MPUC") issued an order requiring Vonage to comply with Minnesota laws that regulate telephone companies.¹ Vonage appealed and requested an injunction. Vonage asked a Minnesota Federal District Court to enjoin the MPUC²; Vonage argues that it provides information services, and not telecommunications services. The Federal District Court concluded that Vonage is an information service provider. Specifically, the Federal Court stated: "In its role as an interpreter of legislative intent, the Court applies federal law demonstrating Congress's desire that information services such as those provided by Vonage must not be regulated by state law enforced by the MPUC. State regulation would effectively decimate Congress's mandate that the Internet remain unfettered by regulation. The Court therefore grants Vonage's request for injunctive relief."³ Subsequent to the court's finding, it has been reported that "Christopher Libertelli, senior legal advisor to FCC Chairman Michael Powell, speaking at the U.S. Telecom Association conference in Las Vegas, said the FCC could develop three sets of rules based on the different methods of provisioning VoIP services: via private networks; over networks that touch the PSTN; and via evolving peer-to-peer networks."⁴ Additionally, the FCC established a pleading cycle for Comments on the Vonage Petition for a Declaratory Ruling and comments are due October 27, 2003 and reply comments are due

¹ *In the Matter of the Complaint of the Minnesota Department of Commerce Against Vonage Holding Corp Regarding Lack of Authority to Operate in Minnesota*, Docket No. P-6214/C-03-108 (Minn. Pub. Utils. Comm'n Sept. 11, 2003) (order finding jurisdiction and requiring compliance).

² *Vonage Holdings Corporation v. MPUC*, Civil No. 03-5287 (D. Minn. Filed October 16, 2003).

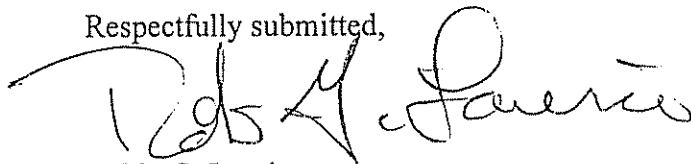
³ *Id.* at 2.

⁴ Glenn Bischoff, *Bells: FCC needs to take quick action on VoIP*, TelephonyOnline.com (Oct 20 2003).

November 24, 2003.⁵ It also appears that the FCC may host a forum on VoIP in the near future.

For the foregoing reasons and due to the resulting ambiguity regarding national policy on this issue, ITC^Deltacom believes it would be prudent for the Commission to defer any immediate action on this matter. Deltacom supports a cost based access regime that is non- discriminatory and competitively neutral. We are hopeful that the pending FCC Docket on Intercarrier Compensation will result in national policy that supports these goals and provides input for state policy on this issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rob G. Laurie', written over a horizontal line.

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October 31, 2003

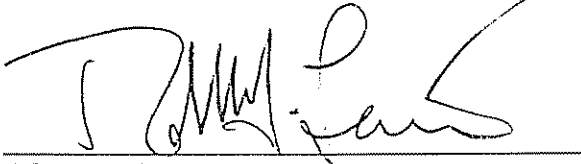
⁵ On September 22, 2003, Vonage Holdings Corporation ("Vonage") filed a petition requesting that the Commission preempt an order of the Minnesota Public Utilities Commission ("Minnesota Commission") requiring Vonage to comply with state laws governing providers of telephone service, even though Vonage avers that it is provider of information services. Specifically, Vonage asks that the Commission find that certain specific E911 requirements imposed by the Minnesota Commission are in conflict with federal policies. Further, Vonage states that preemption is necessary because of the impossibility of separating the Internet, or any service offered over it, into intrastate and interstate components.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the following listed persons by placing a copy of same in the United States mail, postage prepaid and properly addressed on this 31st of October, 2003:

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A handwritten signature in black ink, appearing to read 'J. M. [unclear]', is written over a horizontal line.

Of Counsel